

## UNITED STATES DISTRICT COURT

United States District Court  
Southern District of Texas  
FILED

for the

Southern District of Texas

OCT 20 2014

In the Matter of the Search of

see Attachment A

Case No. B-14-968-MJ

David J. Bradley, Clerk of Court

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## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (*identify the person or describe the property to be searched and give its location*):

see Attachment A for description of items to be searched.

located in the Southern District of Texas, there is now concealed (*identify the person or describe the property to be seized*):  
see Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (*check one or more*):

evidence of a crime;  
 contraband, fruits of crime, or other items illegally possessed;  
 property designed for use, intended for use, or used in committing a crime;  
 a person to be arrested or a person who is unlawfully restrained.

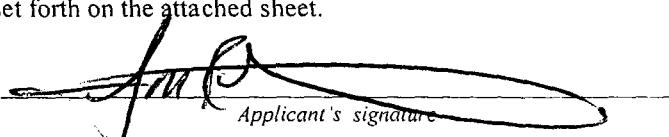
The search is related to a violation of:

Code Section  
18 U.S.C. Section 922(g)(1)

Offense Description  
Felon in Possession of a Firearm

The application is based on these facts:  
See Attached C, Affidavit in Support of Search Warrant.

Continued on the attached sheet.  
 Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days:  
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet. ) is requested

  
Signature  
Anthony M. Rotunno, Special Agent ATF  
Printed name and title

Sworn to before me and signed in my presence.

Date: Oct 20, 2014

City and state: Brenham, TX

  
Signature  
United States Magistrate Judge Ronald G. Morgan  
Printed name and title

**ATTACHMENT A**

1. Room "227" of the Value Place.
2. MASSEY's white in color 2006 Ford F-150, registered to Kevin MASSEY, [REDACTED]  
[REDACTED]
3. MASSEY's white in color iPhone 5. (In ATF Custody)
4. The Scandisk Micro SD SIM card found in MASSEY's pocket. (In ATF Custody)

All four items are in the custody or control of ATF agents in Brownsville, TX.

**ATTACHMENT B**

- I. Books, records, receipts, bills of lading, notes, ledgers, papers, business records, and other items relating to the purchase, possession, and use of firearms.
- II. Books, records, telephone books, address books, receipts, bank statements and records, money drafts, money order and cashier's checks, receipts, passbooks, bank checks, codes, encryption information, computers, documents reflecting the manner and means to access encrypted entries, computer information stored by means of electronic or magnetic devices, including but not limited to, floppy disks, CD ROM, hard drives, back-up hard drives, and tapes, as well as printouts and readouts from any magnetic or electronic storage, and other items evidencing the names, nicknames, addresses, telephone numbers of members of the firearms trafficking organization, known and unknown, and evidencing the obtaining, secreting, transfer, and/or concealment of assets and the obtaining, secreting, transfer, concealment and/or expenditure of money.
- III. Photographs, in particular, photographs of co-conspirators, of assets, and/or firearms.
- IV. Indicia of occupancy, residency, and/or ownership of the premises, including businesses and residences, which includes but is not limited to, utility and telephone bills, canceled envelopes and keys and documents reflecting the manner and means of the purchase of the property.
- V. Telephone bills, cellular telephones, telephone notes pads and notes, contracts, and other documents reflecting the ownership, subscription information, and the use of the telephones, which are often used by large-scale firearms trafficking rings as a tool of the trade.
- VI. Any firearm, ammunition and other items pertaining to the possession of firearms and ammunition, including gun cases, ammunition magazines, holsters, spare parts for firearms, firearm cleaning equipment, photographs of firearms or of persons in possession of firearms, and receipts for the purchase and/or repair of all these items.

## ATTACHMENT C

## AFFIDAVIT FOR SEARCH WARRANT

I, Anthony M. Rotunno, being duly sworn, depose and state that:

I am a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives, within the Department of Justice, (hereinafter ATF) and have been so employed since April of 2008. Prior to my employment with ATF, I was employed with the United States Border Patrol as a Border Patrol Agent starting October of 2002. I have been assigned to the ATF Brownsville Field Office (BFO) my whole career with ATF.

I am a graduate of the Federal Law Enforcement Training Center's Criminal Investigators Program and the ATF National Academy's Special Agent Basic Training program. As a result of my training and experience as an ATF Special Agent, I am familiar with Federal criminal laws and know that it is a violation of:

Title 18 U.S.C. §922(g)(1)—Unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce; and

During my employment as a Special Agent, I have participated in investigations of individuals that have possessed firearms and ammunition after having been convicted of a felony. In addition, I have debriefed defendants, participant witnesses, informants, law enforcement officials and other individuals that have personal knowledge of the illegal possession of firearms and ammunition by a person previously convicted of a felony as defined by section 922(g)(1), Title 18 U.S.C. Based on my experience and training, I know the following:

1. That the ATF National Academy teaches that most Federal Circuit Courts of Appeal have held that it is reasonable to believe that persons normally store their firearms in their homes;
2. That persons who possess firearms usually possess other items related to firearms, such as: gun cases, ammunition, ammunition magazines, holsters, spare parts, cleaning equipment, photographs of firearms and receipts for the purchase of these items;
3. That it is common for individuals who possess firearms and ammunition after being convicted of a felony, to secrete such firearms and ammunition in secure locations within their residence, motor vehicles and other real property over which they have dominion and control;
4. That documents which indicate their occupancy and/or ownership such as personal mail, checkbooks, identification, notes, correspondence, utility bills, rent receipts, payment receipts, financial documents, keys, photographs, leases, mortgage bills, vehicle registration

information, ownership warranties, receipts for vehicle parts and repairs, telephone answering machine introductions; cell phone cameras or other electronic recording devices which may contain electronic data of evidentiary value; and

5. That those persons often take and store photographs of themselves with their firearms, of firearms they own or possess, and usually take or store these photographs using their personal telephones or the "memory" cards of their telephones.

This affidavit is based on information received from law enforcement officers, law enforcement databases, as well as my own investigation. This affidavit seeking the issuance of a search warrant based on the following:

- A. On August 29, 2014, United States Border Patrol Agents from the Fort Brown Border Patrol Station, while in performance of their official duties, encountered an armed individual, identified as John Frederick FOERSTER, in the brush. During this encounter, FOERSTER turned and pointed a firearm at a USBP Agent, who intern fired several shots at FOERSTER. FOERSTER is a member of "Rusty's Rangers," an armed citizen militia group patrolling the border of the United States and Mexico.
- B. During a post-shooting investigation, two of these armed individuals were identified as Kevin Lyndel MASSEY (aka KC Massey) and John Frederick FOERSTER, and both admitted to interviewing officers of the Cameron County Sheriff's Office (CCSO) and Special Agents of the Federal Bureau of Investigations (FBI) to possessing some of the firearms seized.
- C. Specifically, FOERSTER admitted to possessing a ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143; adding that he did not own this firearm but borrowed it from MASSEY. MASSEY also admitted to owning the Zastava pistol that FOERSTER had in his possession and to lending it to him.
- D. During this same encounter, a USBP Supervisor, also from the Ft. Brown Station, witnessed MASSEY carrying a holstered Springfield, Model: XDS, .45 caliber pistol, SN: XS664509 and a Centurion, Model: 39 Sporter, 7.62 x 39mm rifle, SN: 39NC02585, which was slung around MASSEY's neck.
- E. USBP Agents have had numerous encounters with members of "Rusty's Rangers/Regulators", as this group has set up a "camp" (referred to as Camp Lone Star) near the Rio Grande River in Brownsville, Cameron County, Texas. This "camp" appears to be their staging area for their patrols.
- F. During these encounters, on more than one occasion, USBP Agents have seen MASSEY carrying what appears to be a holstered firearm on his hip and a rifle slung around his neck. These encounters are videotaped by MASSEY, usually via a body mounted or vehicle mounted camera; and then posted to MASSEY's Facebook page. Affiant has viewed MASSEY's Facebook; viewing the posted videos that depict MASSEY on patrol with other individuals who armed with long guns. MASSEY's Facebook page also

depicts numerous still photos of MASSEY and others armed with firearms. Friday, October 17 of 2014, was the last time USBP Agents saw MASSEY carrying a firearm; more specifically what they referred to as "automatic firearms".

G. On the August 29, 2014 BP incident, Cameron County Sheriff Office Investigator Sergio Padilla confiscated a personal Go-Pro camera from MASSEY; which was returned to him on a later date. Your affiant knows that a Go-Pro camera requires a scandisk micro SD card for memory.

H. On today's date, October 20, 2014, your affiant secured an arrest warrant for MASSEY and FOERSTER charging them with being Felons in Possession of a Firearm(s) based on the facts relating the August 29<sup>th</sup> incident.

I. As part of this investigation, it was discovered that MASSEY had been staying at the "Value Place", an extended stay type hotel located at 995 Media Luna Road, Brownsville, TX, and to driving a white in color 2006 Ford F-150, TX LP [REDACTED] (registered to Kevin MASSEY, at [REDACTED], with various decals and stickers on the back of the truck. This same vehicle is used by MASSEY to drive to and from the Value Place to "Camp Lone Star" as witnessed by FBI Special Agent Joe Schneider.

J. At approximately 9:30 AM, ATF SA's, with the assistance of FBI, USBP and CCSO agents and officers, established surveillance at the Value Place and located MASSEY's vehicle parked in the front. Surveillance on this vehicle was maintained until MASSEY was arrested leaving the Value Place at approximately 1:00 PM, as he was walking toward his vehicle while talking to someone using a white in color iPhone 5. The iPhone 5 is a smartphone which is capable of taking still photos and uploading photos to Facebook via the internet, which affiant has performed on numerous occasions with his own iPhone.

K. After MASSEY was detained, ATF SA A. Rivas informed MASSEY that he was being arrested based on an arrest warrant, and asked MASSEY if he had any firearms or anything else on him that the agents needed to know about. MASSEY immediately informed SA Rivas that he had a firearm "in his pocket". SA Rivas then pulled a loaded Springfield Armory USA pistol, model XD5, caliber .45, SN XS613495 out of MASSEY's right side, front pocket. The firearm and the white iPhone 5 were seized by ATF.

L. After securing the firearm, and a thorough search of MASSEY's person, MASSEY was transported to the FBI Brownsville Office to be interviewed. At the FBI office, your affiant and FBI J. Schneider attempted to interview MASSEY. However, MASSEY invoked his right to an attorney. When informed that the agents were going to apply for a search warrant for his room, MASSEY stated, without being asked, that there was one more firearm in the room that did not belong to him. Interviewing agents also found a "Scandisk micro SD SIM card" in one of MASSEY's pockets, a room key for the Value Place, and keys for a "Ford" vehicle.

M. On this same date, Your Affiant obtained hotel registration documents from the Value Place hotel; which shows MASSEY as the registered occupant of room 227 from August of 2014 and paid through November 10, 2014.

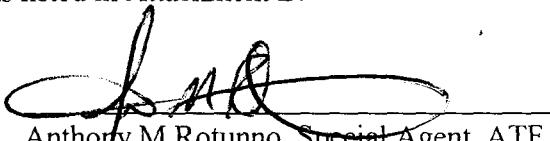
N. After receiving this information, ATF agents knocked on the door of room "227" and no one answered. Since then, two agents have maintained security of this room to prevent anyone from entering.

O. Research revealed that on 3/1/1988, MASSEY was sentenced to 5 years confinement by the 265<sup>th</sup> Judicial District Court of Dallas County, Texas for Burglary of a Habitation (Cause No. F88-77912 JR); probation was revoked after a 11/11/85 arrest for another Burglary of a Habitation (Cause No. F85-92081 PR) wherein MASSEY was convicted in the 203rd Judicial District Court of Dallas County, Texas, thus prohibiting MASSEY from possessing any firearm under Title 18 USC 922(g)(1).

Room 227 is single room located on the second floor of the Brownsville Value Place, and it has the numbers "227" posted next to the door. The room is located on the south portion of the building, on the east side wing.

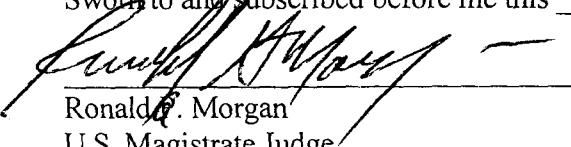
Based on my training and experience in investigating firearms matters, the two encounters USBP has had with MASSEY while he is armed, him being armed at time of arrest and his own admission that there is at least one more firearm in his room; it is believed that evidence of the crime of Felon in Possession will be found inside Room 227, MASSEY's 2006 Ford F-150 (previously identified in this affidavit), MASSEY's iPhone 5 he was using at time of arrest, and the Scandisk Micro SD SIM card found in his pocket.

Based on the above facts, it is respectfully requested that a search warrant be issued for the items listed in Attachment A, specifically looking for items listed in Attachment B.

  
Anthony M Rotunno, Special Agent, ATF

Approved by Assistant U.S. Attorney William Hagen 

Sworn to and subscribed before me this Oct 20 day of 2014

  
Ronald P. Morgan  
U.S. Magistrate Judge